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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/640,621	08/14/2003	David Nicholson Low		1116

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EXAMINER	
SAADAT, CAMERON	
ART UNIT	**PAPER NUMBER**
3715	

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/640,621	LOW, DAVID NICHOLSON	
	Examiner	Art Unit	
	Cameron Saadat	3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1* is/are rejected.

7)☒ Claim(s) *2-5* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claims 1-5 are objected to because of the following informalities:

Regarding claim 1, lines 8-9, the antecedent basis for "said-energy flow meter" and "said exercise-energy flow meter" has not been clearly set forth. It appears that the word "flow" should be replaced with -- rate --. In addition, in lines 9-10, the antecedent basis for "said diet energy" and "said exercise-energy" has not been clearly set forth.

Regarding claims 2-3, it is the examiner's opinion that the clarity and precision of the claim language can be improved by replacing the phrase "The analog of claim" with -- The analog device of claim --.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Karkanen (US 5,839,901).

Regarding claim 1, Karkanen discloses a device which demonstrates relationships between human diet, exercise and weight, the device comprising an energy flow passing through a suitable conduit as a means to power the device, the energy flow being conducted in series through a variable diet-energy restrictor to simulate changes in diet; a diet-energy rate meter to display the changes in diet; an exercise-energy rate meter as a means to display changes in exercise; an exercise-energy restrictor as a means to simulate changes in said exercise-energy; an energy magnitude meter connected to measure energy magnitude between the diet-energy rate meter and said exercise-energy rate meter to display simulated weight resulting from changes to the diet-energy and the exercise-energy. See Fig. 1-2, 11-13,18; Col. 15, lines 5-30.

Karkanen discloses all of the claimed subject matter with the exception of explicitly disclosing that the device is an analog device. However, the recitation "analog device" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Allowable Subject Matter

Claims 2-5 are objected to as being dependent upon a rejected base claim, but would be allowable if claim 2 is rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is an examiner's statement of reasons for allowance: Patentability is seen in, although not limited to: dependent claim 2, the combination of elements specifically claimed including the feature of providing energy flow conducted in series through a variable diet-energy restrictor, a diet-energy rate meter, an exercise-energy rate meter, an exercise-energy restrictor, and an energy magnitude meter; wherein the energy flow is a pressurized liquid flowing through tubes; wherein

the variable diet-energy restrictor is a throttle valve; wherein the diet-energy rate meter and exercise-energy rate meter is a liquid flow meter; wherein the exercise-energy restrictor is a throttle valve; wherein the energy magnitude meter is a pressure measuring device connected between the diet-energy rate meter and the exercise-energy rate meter to display a simulated weight resulting from changes in diet and exercise. The closest prior art of record does not teach or fairly suggest these features in the combination.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Segar et al. (US 4,212,079) – disclose a device for displaying calories burned versus an individual's calorie intake.
- Mault et al. (US 6,513,532) – disclose a diet and activity-monitoring device.
- Abrams et al. (US 5,673,691) – disclose a hand-held computer for monitoring weigh, nutrition, and exercise.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is (571) 272-4443. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571)272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cameron Saadat
9/26/2006

9/28/06

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